

**TRAVEL AGENCY COMMISSIONER - AREA 1 (DEPUTY TAC 2)**  
*VERÓNICA PACHECO-SANFUENTES*  
110 – 3083 West 4<sup>th</sup> Avenue,  
Vancouver, British Columbia V6K 1R5  
CANADA

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**DECISION 2013 - # 57**

**In the matter of:**

**Siym Voyages**

IATA Code No. 39210511

Plateau Avenue Noguès Immeuble Trade Center rez de chaussée  
Abidjan, Côte d'Ivoire

Represented by its Director, Mrs. Simone Wognin, and its  
Accountant, Mr. Maxence Kouakou

**The Applicant**

vs.

**International Air Transport Association (“IATA”)**

King Abdallah II Street, Al Shaab roundabout  
Business Park, Building GH8

P.O. Box 940587

Amman 11194, Jordan

Represented by the Risk Assessment Manager Africa & Middle East,  
Ms. Diala Halaseh

**The Respondent**

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**I. The Case**

The Applicant sought a Travel Agency Commissioner’s review of the Respondent’s action of suspending it from the BSP based on the erroneous hypothesis of not having uploaded the financial statements within the due time<sup>1</sup>. The Applicant had in fact uploaded its financial statements (“FS”) on June 15, 2013 and had submitted proof of it, not contradicted by the Respondent.

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<sup>1</sup> The original text in French stated as follows: <<... vous n’avez pas téléchargé vos états financiers avant le dernier délai>>.

The referred suspension came in the midst of a negotiation process between the Applicant and the Respondent in regards to the time frame that had been given to the Applicant to provide an increase of its current bank guarantee ("BG"), as a result of its annual financial evaluation.

The Respondent on June 25, even though it had addressed the notice requesting the BG in French, as it corresponded, did not take in consideration the way dates are referred to in non-English speaking countries (or non-British/American influenced countries), where the first number refers to the day, the second to the month and the last to the year. Thus, when the Applicant read in the Notice that it had until 7/10/2013 to provide the BG, understood, and so did its financial institution, that it had until October 7, 2013 to submit it. This request was denied.

In any case, it is worth to note that the initial time frame given to the Applicant to comply was only **15 days**. However, despite the date misunderstanding, the Applicant contacted its bank on July 3, 2013 requesting for the increase in the amount of the BG.

Somehow the Respondent realised this detail about the manner the date had been communicated to the Applicant and on July 10, it sent an email to the Applicant clarifying that the given time frame (7/10/2013) actually meant **Jul. 10**, 2013. The Applicant requested more time, since there was no possible action to be undertaken by it and get the BG in place within such a short notice. The Respondent then allowed an extension until Aug. 10, 2013, that turned out to be until Aug. 12, 2013 due to statutory holidays. Faced at this new date, on Aug. 6 and 7, the Applicant argued the summer holiday season of its bank directors, as well as some bank rearrangements that it needed to undertake and asked for an extension of the due date. From the Applicant's stand a reasonable date would had been the initially given one, meaning Oct. 7, 2013. This request was denied and on 13 Aug. the Applicant was suspended from the BSP.

Even though the Suspension Notice indicated as cause for it the uploading reason (referred above), according to the Respondent's submission to this Office, it was due to <<not increasing his BG>><sup>2</sup> as it had been requested.

IATA has expressly recognised the date's mistakes, stating:

<<The initial deadline of 10 July was postponed till 10 Aug. due to 2 reasons:

1. The time was not enough and the first deadline was less than a month (IATA's mistake)

2. The date format in the initial request was not clear

So Agent was given in total 45 days according to Resolution 818g, para. 2.2.1<sup>3</sup>>>.

## **II. The Applicant's arguments in summary**

- The suspension was totally unfair considering that we have not incurred in any default or lack of payment. It has caused us enormous damage;
- We have undertaken <<all the due diligence with our bank in order to get the BG in place at the best delay>>;
- <<There were many mistakes in the IATA's procedures>>.

## **III. The Respondent's arguments in summary**

- <<Agent had been suspended on 13 Aug. due to failure to provide additional security...>>
- <<and based on the communicated deadlines and as per Resolution, IATA should have terminated the location on 30<sup>th</sup> September 2013, however considering the TAC review no action has been taken>>.

## **IV. Oral Hearing**

Pursuant Paragraph 2.3 of Resolution 820e and Rule 14 of the Rules of Practice and Procedure, this Commissioner, acting upon both Parties' agreement on waiving an oral

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<sup>2</sup> Email dated 14 Aug., 2013

<sup>3</sup> Email dated Aug. 19, 2013

hearing, had decided to base her decision only on the written submissions that have been filed by both of them.

## V. Considerations leading to conclusion

Based on the evidence on file and in the facts narrated *supra*, it is clear for this Commissioner that:

- (1) The request to increase the amount of the Applicant's BG is due to its failure to comply with the Local Financial Criteria ("LFC"), as resulted in its FS' annual evaluation, and as such, there is no doubt about the Respondent's right to have requested for it;
- (2) While the right to request the BG increased is unquestionable, there had been several shortcomings committed by the Respondent while delivering the message to the Applicant, in order for it to comply within the due time. Reference is made to:
  - (i) not only to the manner the date was indicating -ignoring the non-British/American way of doing it-, but also
    - (ii) the original short period granted for the Applicant to fulfil its obligation, considering that Resolution 818g, Paragraph 2.2.1 establishes a span from 30 to 60 days, hence the initial 15 days being completely unreasonable and against the applicable rules;
    - (iii) the reasons presented by the Applicant, before the expiration of the given time frame, in support of its extension request were not fully considered by the Respondent, despite the fact that the above mentioned provision does contemplate the possibility for IATA to extend the due date up to **a maximum of 60 days**; and, finally,
    - (iv) the fact that the reason stated in the Suspension Notice as causing the Applicant's withdrawal from the BSP system was incorrect, since the cause was not related to any uploading issue, but rather to the non submission of the requested BG within the due time,

8)

It is this Commissioner's belief that all of those oversights have greatly impacted the Applicant's ability to fully understand its situation and act accordingly in a timely manner.

## **VI. Decision**

Having carefully reviewed all the evidence and arguments submitted by the Parties in connection with this case;

Having looked at the applicable Resolutions;

It is hereby decided:

- The Applicant has to provide the increase of the financial security in the terms that has been requested by the Respondent;
- The Applicant is hereby granted until **Nov. 13, 2013** to submit the referred BG. Once submitted, the Applicant should be re-instated to the BSP system without any further delay nor requirements.

Decided in Vancouver, the 28<sup>th</sup> day of October 2013



*Verónica Pacheco-Sanfuentes*  
Travel Agency Commissioner Area 1  
acting as Deputy TAC2

### **Right to ask for interpretation or correction**

In accordance with Res 820e § 2.10, any Party may ask for an interpretation or correction of any error which it may find relevant to this decision. The timeframe for these types of requests will be 15 days after receipt of the electronic version of this document.

### **Right to seek review by arbitration**

As per Resolution 820e, Section 4 any Party has the right, if it considers aggrieved by this decision, to seek review by Arbitration, in accordance with the provisions of Resolution 824, Section 14, once the above mentioned time frame would have elapsed.

**Note:** The original signed version of this decision will be sent to the Parties by regular mail, once the referred period for interpretation/corrections would have expired.